IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P.NO 17908 OF 2006

DATE OF DECISION:14.11.2006

H.C.Arora **...PETITIONER**

VERSUS

U.O.I. And others **...RESPONDENTS**

CORAM: HON'BLE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE S.S.SARON

Present: Mr.H.C.Arora, Advocate- petitioner in person

S.S.Nijjar, ACJ (Oral)

We have heard Mr. H.C.Arora, Advocate, petitioner appearing in person and perused the paper-book.

Learned counsel prays for the issuance of a writ in the nature of Certiorari quashing the provisions of Article 124 (4), (5) and Article 217(1) of the Constitution of India which provides for impeachment of judges of the High Courts and the Supreme Court on the ground of proved misbehavior or incapacity. Learned counsel submits that the aforesaid provision is violative of the basic structure of the Constitution of India which includes the independence of the judiciary. Learned counsel has supported the submission with the practice of exercise of whip as prevalent in the Parliament. According to the learned counsel, when a mandatory whip is issued to the MPs belonging to a particular party, they lose the independence to exercise their vote in accordance with their conscience.

Learned counsel further submits that even if the procedure of issuing a mandatory whip is held to be not ultra vires the Constitution, it would certainly need to be regulated so that it is not made applicable in impeachment proceeding. Learned counsel further submits that the provisions incorporated in the aforesaid Articles for impeachment of Judges would be contrary to the objects and reasons for which the Judges (Inquiry) Act, 1968 was enacted. Learned counsel further submits that this Court will have the jurisdiction to test the constitutional provisions as to whether it is violative of the basic structure of the Constitution of India. Learned counsel then submits that the parliamentary proceedings have now lost the status and sanctity it earlier enjoyed. Large number of elected Members of Parliament are either facing criminal proceedings or have faced criminal proceedings in the past.

We have considered the submissions made by the learned counsel. We are of the opinion that it would be more appropriate that the matters agitated in the present writ petition are highlighted before the Parliament or any other Forum related to the Parliament. The matters with regard to the suitability of a candidate would have to be evaluated by the voters in electing a particular candidate to the Parliament or the Legislature. Learned counsel submits that he has made representations to the Prime Minister of India and Members of the Cabinet. Subsequent to the representations being sent by the learned counsel, statements have been issued in Press indicating the intention of the Government to make amendments in the Judges (Inquiry) Act, 1968 while retaining the provisions of impeachment. Therefore, the present writ petition has been filed. We are of the considered opinion that even these matters can be agitated before the Parliament.

As a parting shot, learned counsel argues that the unreasonableness of impeachment procedure can be demonstrated by the fact that even the protection under Article 235 of the Constitution of India is not available to the High Courts as well as the Supreme Court Judges whereas it is available to the Superior Judicial Service. This again, in our opinion, is a matter to be agitated before the appropriate authority.

For the aforesaid reasons, the writ petition is dismissed.

(S.S.NIJJAR)
ACTING CHIEF JUSTICE

(S.S.SARON)
JUDGE

14.11.2006
MFK

NOTE: Whether to be referred to the Reporter or not:YES/NO